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Draft report

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Annex

Informal summary of the discussions in the Working Group of the Whole, prepared by the Chairman of the Working Group

A. General remarks

1. The Working Group agreed that the main issue to be considered at the present session of the Ad Hoc Committee was that of the scope *ratione personae* of the new system of administration of justice. Therefore, most of the work of the Working Group focused on that issue. However, some other legal issues were also addressed in the discussions, such as the questions of legal assistance to staff and whether staff associations may file applications before the United Nations Dispute Tribunal.

2. In the course of a question-and-answer session, representatives of the Secretariat answered questions from delegations on the following topics: the different categories of non-staff personnel and dispute settlement mechanisms available to them; management evaluation; legal assistance to staff; the selection of candidates made by the Internal Justice Council for the positions of judges at the United Nations Dispute Tribunal and the United Nations Appeals Tribunal; the status of the preparation for the implementation of the new system; disciplinary procedures; and the preparation of the rules of procedure of the two Tribunals.

B. Scope of the new system

3. Several delegations expressed the view that non-staff personnel should be provided with effective mechanisms for the settlement of their disputes with the

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Organization. The point was made that, in line with the original purpose of the reform, the mechanisms to be afforded to non-staff personnel should not be too diverse or complicated in order to avoid any discrimination or discouragement of their utilization.

4. Some delegations pointed to the need for receiving additional information from the Secretariat on the types and number of disputes involving non-staff personnel, the mechanisms currently available to them and the problems that had arisen in the implementation of such mechanisms.

5. Some delegations raised the question of whether non-staff personnel should, as proposed by the Secretary-General (A/62/782, para. 55), be granted access to the new informal system of administration of justice, and, if so, under what conditions and modalities such access should be granted. Other delegations were of the view that the informal system should play a greater role in the settlement of disputes between the Organization and its personnel, and that non-staff personnel should be encouraged to resort to that system. The point was made, however, that it was necessary for the Ad Hoc Committee to receive further information on how the new informal system would actually work, on its current resources and capabilities, and on the possible outcome of a procedure brought to it, in particular with regard to mediation.

6. Some delegations also referred to the need to provide non-staff personnel with adequate redress mechanisms in the event that recourse to the informal system would not produce a satisfactory outcome.

7. Some delegations were of the view that it was still necessary to obtain further information on the adequacy of the mechanisms that are currently available to the various categories of non-staff personnel, more specifically with regard to arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL). In view of the low number of cases that were settled by arbitration under UNCITRAL rules, the question was asked whether this type of arbitration was suitable for the needs of non-staff personnel, in particular in light of the costs that were involved.

8. Recalling the decision already made by the General Assembly, in paragraph 7 of its resolution 63/253, to grant interns, type II gratis personnel and volunteers (other than United Nations Volunteers) the possibility of requesting an appropriate management evaluation, a proposal was made to extend such a possibility to other categories of non-staff personnel.

9. Some delegations also recalled the possibility of granting non-staff personnel access to the Dispute Tribunal. It was suggested that expedited procedures could be provided for that purpose in the statute of the Dispute Tribunal.

10. According to another proposal, an alternative mechanism could be created for non-staff personnel performing work by way of their personal service for the United Nations. Such mechanism could comprise two steps. First, such personnel should be provided with a possibility of obtaining a managerial review of the contested decision. Thereafter, the possibility of recourse to arbitration pursuant to UNCITRAL rules would be maintained for claims exceeding $25,000, while an expedited and streamlined arbitration procedure would be established for claims of a lesser amount. It was proposed that, under such simplified procedure, cases would be decided by a single arbitrator with no possibility of appeal; moreover, a list of

regional or national arbitration associations, which would agree to assist in the settlement of such disputes and would work under the local arbitration rules, could be maintained. It was suggested that the Secretariat could be asked to study the feasibility of that proposal.

11. Reference was also made to the Secretary-General's proposal that non-staff personnel be provided with a separate formal, but less lengthy and complex dispute resolution procedure (see A/62/782, paras. 52-54). Such a mechanism could consist of an internal standing body with powers similar to those of the Dispute Tribunal, which would make binding decisions that are final and not subject to appeal. Some delegations were of the view that the Secretary-General should be requested to elaborate on this proposal and to provide further details thereon. However, the point was also made that the establishment of an independent standing body might not be appropriate at the present stage.

C. Other legal issues

12. The Working Group also considered the questions of legal assistance to staff and the filing of application by staff associations. With regard to the former issue, reference was made to paragraphs 9, 11, 15 and 16 of General Assembly resolution 63/253.